IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 428 OF 2005

Elite Diagnostic Centre Pvt. Ltd. ..Appellant

Vs.

Bansi Lal Kanojia & Anr. ..Respondents

Mr. Vijay Hegde for Appellant.
Mr. A.Y. Sakhare with Mr. Anil Singh with Mr. D.R. Shah for Respondent No.1.
Ms. Geeta Jogalekar for Respondent No.2-BMC.

CORAM: B.H. MARLAPALLE, J.

Date : June 21, 2005.

P.C.:

1. Heard Mr. Vijay Hegde for the appellant who has filed an application for intervention in L.C. Suit No.408 of 2005 before the City Civil Court at Mumbai. In the said suit Notice of Motion No.262 of 2005 has been filed praying for temporary injunction against the proposed demolition during the pendency of the suit and by the impugned order dated 27/1/2005 the trial court has granted ad-interim relief in terms of prayer clause (a) of the Notice of Motion.

2. Admittedly, the appellant's intervention

application is still pending and it is not known whether the Brihan Mumbai Corporation has filed its reply to the Notice of Motion as yet. As per the parties the Notice of Motion was before the trial court on 11/6/2005 and it has been now adjourned to 7/7/2005. The ad-interim prayer has been granted pending the final disposal of the Notice of Motion. At the same time pursuant to the order passed by this Court on 4/8/1997 in A.O. No.679 of 1997 the plaintiff has submitted an application dated 23/8/1997 to the Deputy Municipal Commissioner, Zone-III, "H" West Ward Office, Bandra (W), Mumbai and as per the plaintiff the said application is still pending. The application is filed for regularisation of the suit structure and this court directed for disposal of the same on merits and in accordance with law. It was further directed that till the application is disposed of, the structure shall not be demolished, subject to the condition that an application is submitted within three weeks from 4/8/1997.

3. It would be, therefore, expedient to dispose of the appeal and it is accordingly disposed of in

terms of the following directions:-

(a) The Defendant-Municipal Corporation shall file its reply to the Notice of Motion, if not done so already, by the next date i.e. 7/7/2005.

(b) The pending application dated 23/8/1997 shall be heard and decided by the Deputy Municipal Commissioner, Zone-III, "H" West Ward Office, Bandra (W), Mumbai of the Defendant - Municipal Corporation before 7/7/2005. The plaintiff shall appear before the Deputy Municipal Commissioner for hearing of the said application on 28/6/2005 at 3.00 p.m.

(c) The intervention application filed by the present appellant shall be decided by 7/7/2005 by the trial court.

(d) Notice of Motion No.262 of 2005 shall be heard and decided on its own merits as

expeditiously as possible and in any case by 31/8/2005.

(e) Ad-interim order passed by the trial court shall continue to operate till 31/8/2005 or till the date the Notice of Motion is decided, whichever is earlier.

. The learned counsel for the respective parties have furnished a solemn undertaking before this court that they would not seek unwarranted adjournments from 7/7/2005 onwards.

(B.H. Marlapalle,J.)